

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DERRICK LAMAR KING, *et al.*, :
Plaintiff, :
: :
v. : : CIVIL ACTION NO. 19-CV-0389
: :
BERKS COUNTY JAIL SYSTEM : FILED
SUPERVISOR OFFICIALS, *et al.*, : MAY 14 2019
Defendants. : :
: :
ORDER : :
DRAFTED BY M. Clark
SIGNED BY M. Clark
Dep. Clerk

AND NOW, this *14th* day of May, 2019, upon consideration of Plaintiff Jose Enrique Nuñez's Motion to Proceed *In Forma Pauperis* (ECF No. 9) and Prison Account Statement (ECF No. 10), Plaintiff Derrick L. King's Motions for Appointment of Counsel (ECF No. 14), and the *pro se* Complaint filed in this case (ECF No. 1), it is ORDERED that:

1. Plaintiff Derrick King is **DISMISSED without prejudice** as a plaintiff in this case because he failed to file a certified copy of his prison account statement as discussed in the Court's accompanying Memorandum.
2. King's Motion for Appointment of Counsel is **DENIED as moot** because King is no longer a party to this civil action.
3. Nuñez is **GRANTED** leave to proceed *in forma pauperis*.
4. Plaintiff Jose Enrique Nuñez, #2016-0705, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b). Based on the financial information provided by Nuñez, he is not assessed an initial partial filing fee. In each month when the amount in Nuñez's inmate trust fund account exceeds \$10.00, the Warden or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to

Nuñez's inmate trust fund account until the fees are paid. Each payment shall reference the docket number for this case, Civil Action No. 19-389.

5. The Clerk of Court is directed to **SEND** a copy of this Order to the Warden of the Berks County Jail.

6. The Complaint is **DEEMED** filed.

7. The Clerk of Court shall **TERMINATE** Berks County Jail System Supervisor Officials as a Defendant in this case

8. The Complaint is **DISMISSED without prejudice** in its entirety for the reasons discussed in the Court's Memorandum.

9. Nuñez is given leave to file an amended complaint within thirty (30) days of the date of this Order in the event he can state a plausible claim. If Nuñez files an amended complaint, he must identify all of the defendants in the caption of the amended complaint. Any individual or entity that is not listed in the caption will not be treated as a defendant. The amended complaint must also clearly describe how each defendant was responsible for violating Nuñez's rights. Any amended complaint must clearly allege facts showing the conditions to which Nuñez was subjected and must identify the policy or custom that caused the constitutional violation in question. Nuñez is reminded that he may only challenge conditions to which he was subjected and may not challenge the conditions in other units at the Berks County Jail or conditions on his unit to which he was not subjected. When drafting his amended complaint, Nuñez should be mindful of the Court's reasons for dismissing his claims as explained in the Court's Memorandum. If Nuñez still intends to pursue this action on a class basis, he must indicate that fact in his amended complaint so that his intentions are clear to the Court. Upon

the filing of an amended complaint, the Clerk of Court shall not make service until so

ORDERED.

10. If Nuñez fails to file an amended complaint, his case may be dismissed without prejudice for failure to prosecute without further notice.

BY THE COURT:



The image shows a handwritten signature in black ink, which appears to read "Cynthia M. Rufe, J.". Below the signature, the name "CYNTHIA M. RUFÉ, J." is printed in a smaller, sans-serif font.